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U.S. DISTRICT COURT
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ALBANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCAN ALUMINUM CORPORATION, and

RUSSELL MAHLER,

Defendants.

No. 03-CV-0765

NPM/RET

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for recovery of response costs brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607(a). The United States seeks payment from defendants Alcan Aluminum Corporation ("Alcan") and Russell Mahler ("Mr. Mahler") (collectively, "Defendants") of unreimbursed costs incurred by the United States with respect to the Quanta Resources Superfund Site ("Site") in Syracuse, New York, together with accrued interest.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the Defendants pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

THE DEFENDANTS

4. Alcan is an Ohio corporation with its corporate headquarters and principal place of business in Cleveland, Ohio. Alcan is the successor-in-interest, by 1985 corporate merger, to Alcan Aluminum Corporation, a New York corporation (also referred to herein as "Alcan"). The Alcan Rolled Products Company ("Rolled Products") was, at times relevant to this action, a division of Alcan. Alcan is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Mr. Mahler is a natural person who resides in North Haven, Connecticut, and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

6. The Site consists of an abandoned waste oil processing facility occupying three-quarters of an acre of land located at 2802-2810 Lodi Street in the City of Syracuse, Onondaga County, New York.

7. Several companies owned and/or operated by Mr. Mahler, including, among others, Quanta Resources, Inc., conducted waste oil processing at the Site and transported waste

oil containing hazardous substances to the Site for such processing from approximately 1957 until November 1980, when the waste oil processing facility was closed. At the time of closure, the Site included two standing structures, namely, a boiler building in which waste oil was filtered and dehydrated, and a "main refinery building" that was used for canning and various oil treatment operations. The Site also included fifty-two above-ground storage tanks with capacities ranging from 225 to 35,000 gallons, four underground storage tanks with capacities ranging from 10,000 to 22,000 gallons, and two sumps.

8. After the cessation of waste oil processing at the Site, but prior to any response action by EPA, the tanks at the Site contained a variety of wastes, including tank bottoms, waste oils, oil-water mixtures, acids, and caustic solutions. These wastes were contaminated with a variety of "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, without limitation, volatile organic compounds, semi-volatile organic compounds, heavy metals, and polychlorinated biphenyls ("PCBs"). As of 1989, approximately 85,000 gallons of liquid waste remained in the above-ground storage tanks, approximately 30,000 gallons of liquid waste remained in the underground storage tanks, approximately 8,000 gallons of liquid waste remained in the sumps, and approximately 4,235 gallons of liquid waste remained in drums stored at the Site.

9. During the years immediately following the cessation of waste oil processing activity at the Site, numerous spills or leaks of hazardous substances into the environment occurred at or from the Site, as a result of both vandalism and the deteriorated condition of the storage tanks and process piping at the Site. In August 1989, the New York State Department of

Environmental Conservation ("DEC") requested that EPA consider the Site for removal action pursuant to CERCLA.

10. Beginning with initial assessment and sampling activities in October 1989, EPA conducted a removal action at the Site at various times until at least June 28, 2000. This removal action included, among other activities, emptying and decommissioning of all above-ground storage tanks and proper disposal of their contents, removal of the contents of sumps and drums, monitoring of contaminants remaining on the Site at various times during the removal action, removal of combustible debris, removal and disposal of asbestos insulation from boilers, demolition of dilapidated structures, removal and disposal of waste from underground storage tanks and closure of the tanks, disposal of grossly contaminated soil, re-installation of a site security fence, and application of grass seed, fertilizer and mulch to establish vegetative cover, prevent soil erosion and control migration of contaminants remaining at the Site.

11. On November 7, 2000, EPA sent a closeout letter to DEC confirming that removal action at the Site was completed.

12. EPA's removal action disclosed that the Site, including surface and subsurface soil, was contaminated with numerous hazardous substances, including, without limitation, 2-methylnaphthalene, naphthalene, 1,2-dichloroethane, 1,1,1-trichloroethane, tetrachloroethane, toluene, ethylbenzene, xylene, barium, lead, zinc, chromium, nickel, aluminum, strontium, cadmium, copper, and PCBs. Many of the wastes found at the Site exhibited high levels of ignitability, corrosivity and toxicity. In addition, some of these chemicals are known or suspected human carcinogens, teratogens, and/or mutagens.

13. Many different pathways existed for the release or threatened release of these hazardous substances into the environment at or from the Site. For example, hazardous substances from above-ground and underground storage tanks spilled or leaked into the soil, creating the threat of runoff into nearby waterways; corrosive liquids were found in storage tanks that were at risk of tank failure and/or collapse; abandoned drums in poor condition containing hazardous substances were found at the Site; and flammable wastes left in abandoned and dilapidated buildings at the Site presented the threat of release by fire.

14. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. Alcan owned and operated its Rolled Products facility in Oswego, New York continuously from 1963 through at least July 1994. The Rolled Products facility recycled aluminum scrap into ingots, and then, through hot and cold rolling processes, produced a variety of aluminum sheet and plate products for the beverage, food container, transportation, and construction industries.

16. Alcan used a variety of chemical compounds in its aluminum recycling processes at the Rolled Products facility. The process included the use of an oil and water emulsion to lubricate and cool the ingots. This use of the emulsion generated a "waste emulsion."

17. At various times during the operation of Alcan's Rolled Products facility and the operation of the Site as a waste oil processing facility, Alcan arranged for disposal of large quantities of its waste emulsion at the Site. In particular, and without limitation, during 1978 and 1979, Alcan arranged for disposal of approximately 2,964,000 gallons of its waste emulsion at the Site.

18. The waste emulsion generated from operations at the Rolled Products facility that Alcan disposed at the Site was the same in chemical content as the waste emulsion generated from the Rolled Products facility that Alcan disposed of at a waste disposal and treatment facility in Oswego County, New York then owned by Pollution Abatement Services of Oswego, Inc. ("PAS"), and that Alcan disposed of at the Fulton Terminal in Fulton, New York, a staging and storage area for hazardous wastes. The PAS and Fulton facilities are now designated as the PAS Superfund Site and the Fulton Superfund Site.

19. Alcan's waste emulsion generated at the Rolled Products facility contained hazardous substances, including aluminum, cadmium, chromium, copper, lead, zinc, nickel and PCBs. United States v. Alcan Aluminum Corp., 315 F.3d 179, 183, 186 (2d Cir. 2003), reh'g and reh'g en banc denied, United States v. Alcan Aluminum Corp., No. 01-6008, slip op. (2d Cir. Apr. 21, 2003). Each of these hazardous substances was detected at the Site.

20. Mr. Mahler owned and/or operated the Site during times when hazardous substances were disposed of at the Site, controlled operations relating to the transportation of hazardous substances to the Site, and accepted such hazardous substances for transport to the Site.

21. In addition to its removal action, EPA also initiated several CERCLA enforcement actions with respect to the Site. Beginning in 1990, EPA sent letters notifying over 170 parties, including the Defendants, of their potential liability for contamination at the Site. In 1992, EPA entered into two administrative agreements with 26 potentially responsible parties ("PRPs"), and recovered \$1.07 million in federal response costs. Neither of the Defendants participated in these agreements.

22. On February 8, 1995, EPA issued a demand letter to approximately 150 PRPs, including the Defendants, who were not parties to the 1992 settlements, demanding reimbursement of EPA's outstanding response costs. In January 1996, after discovering records identifying additional PRPs, EPA entered into two additional administrative settlements with a total of 88 additional PRPs, resulting in a cost recovery of \$463,000.

23. In September 1996, more than 60 PRPs entered into an EPA Administrative Order on Consent (AOC) for the performance of a soil investigation at the Site, as well as a settlement clarifying their liability for actions EPA took at the Site. The Defendants were not parties to the AOC.

24. In 1997, EPA recovered an additional \$15,000 in Site response costs through a stipulation in the bankruptcy proceeding of another PRP.

25. In March 1998, EPA sent notice letters to ten PRPs, including the Defendants, requesting that they perform the remaining removal activities at the Site. None of the PRPs agreed to do so, and, as stated in paragraphs 10 and 11 herein, EPA completed the removal action at the Site.

26. As a result of the releases or threatened releases of hazardous substances at or from the Site, the United States has incurred "response costs," within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a). As of March 2002, EPA's response costs with respect to the Site totaled \$2,750,655.78, of which EPA has recovered a total of \$1,538,708.68 in reimbursement from the enforcement actions described in paragraphs 21-24 herein. Thus, of those response costs incurred by the United States as of March 2002, at least \$1,211,843.10 remains unrecovered. In addition, as of May 10, 2002, \$142,789.93 in

interest had accrued on the United States' past costs since EPA's issuance of the February 1995 demand letter to the Defendants and other PRPs described in paragraph 22 herein, and continues to accrue.

27. The response actions taken by the United States with respect to the Site, and their resulting response costs, are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

28. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section--

...

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities . . . or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

29. Section 107(a) of CERCLA also provides that such liability shall include interest on the amount recoverable, which shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned, accruing at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26, U.S. Code.

CLAIM FOR RELIEF

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. Alcan arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by it at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

32. Mr. Mahler was the owner or operator of the Site at the time of disposal of hazardous substances at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2); and accepted hazardous substances for transport to the Site, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

33. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Alcan and Mr. Mahler are liable to the United States, jointly and severally, for all unreimbursed response costs incurred by the United States with respect to the Site, including the enforcement costs of this action, plus accrued interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

A. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding Alcan and Mr. Mahler jointly and severally liable for all unreimbursed costs incurred by the United States with respect to the Site, plus interest thereon, in an amount to be proven at trial;

B. Award the United States its costs of this action; and

C. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

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Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: _____

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